

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In re Applications of)	MM Docket No. 93-94
SCRIPPS HOWARD BROADCASTING)	File No. BRCT-910603KX
COMPANY)	
For Renewal of License)	
Station WMAR-TV)	
Baltimore, Maryland)	
and)	
FOUR JACKS BROADCASTING, INC.)	File No. BPCT-910903KE
For Construction Permit for a)	
New Television Facility on)	
Channel 2 at Baltimore,)	
Maryland)	

To: Administrative Law Judge
Richard L. Sippel

**MASS MEDIA BUREAU'S OPPOSITION TO
REQUEST FOR PERMISSION TO FILE APPEAL**

1. By Memorandum Opinion and Order, FCC 93M-708, released November 16, 1993, the Presiding Judge rejected Four Jacks Broadcasting Company (Four Jacks) Exhibit 5 which contains 42 letters allegedly critical of WMAR-TV. On November 22, 1993, Four Jacks filed a "Request for Permission to File Appeal" of the Judge's order. The Mass Media Bureau hereby opposes Four Jacks' request to appeal.

2. Section 301(b) states that interlocutory rulings may only be appealed upon a showing that "the appeal presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred." It is plain that Four Jacks cannot meet either prong

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of this test.

3. Four Jacks Exhibit 5 consists of 42 letters from members of the general public, the bulk of which complain about decisions made by WMAR TV's management concerning the station's entertainment programming. The criteria by which a station's right to a renewal expectancy is to be evaluated are set forth in the Review Board's decision in Metroplex Communications, 4 FCC Rcd 8149, 8151 (1989). The programming criteria (criteria 1, 2 and 3), all relate to programming broadcast to meet the needs, problems and interests of the station's community. A station's entertainment programming decisions are irrelevant to these criteria. Therefore, the presiding judge was correct to reject Four Jacks Exhibit 5 on the basis of clearly established precedent. No new or novel question of law is presented by Four Jacks' request to appeal. See also, Fox TV Stations, Inc., 8 FCC Rcd 2361, 2388-89 (Rev. Bd. 1993).¹


4. Even if Four Jacks had established that its appeal raised a new or novel question of law, its appeal must still be rejected because the error would not require remand. Even though


¹ Four Jacks contends that, in Video 44, 3 FCC Rcd 3587, 3591 (1988) the Review Board considered letters from the public which went beyond that station's reputation for non-entertainment programming. In Video 44, however, the letters were discussed under a paragraph dealing with locally produced programs to meet community needs and interests. Presumably, these letters dealt with older non-entertainment programs which had been replaced when the station went to a subscription television format.

Four Jacks Exhibit 5 has not been received into evidence, it has been marked for identification. Thus, it will travel with the record of this proceeding and be available for review by reviewing authorities. Under these circumstances, there would be no need for a reviewing authority to remand this proceeding for the taking of further evidence.

5. In sum, the Bureau submits that the presiding judge's Memorandum Opinion and Order rejecting Four Jacks Exhibit 5 was correct and that Four Jacks has not met the test for appeal of that decision.

Respectfully submitted,
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November 30, 1993

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 30th day of November 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Opposition to Request for Permission to File Appeal"** to:

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